IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE R.BASANT

MONDAY, THE 13TH AUGUST 2007 / 22ND SRAVANA 1929

Bail Appl..No. 4800 of 2007()

[CRIME NO.307 OF 2007 OF ALAPPUZHA SOUTH POLICE STATION

PETITIONER/1ST ACCUSED:

BIJU, AGED 40 YEARS,
S/O. VASU, MANGALATHU VELIYIL,SANATHANAPURAM P.O.,
ALAPPUZHA.

BY ADV. SRI.S.SANAL KUMAR

RESPONDENTS: COMPLAINANT:

STATE OF KERALA,
REPRESENTED BY THE PUBLIC PROSECUTOR,
HIGH COURT OF KERALA, ERNAKULAM.

BY PUBLIC PROSECUTOR SRI.S.U.NAZER

THIS BAIL APPLICATION HAVING COME UP FOR ADMISSION ON 13/08/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

R.BASANT, J.

B.A.No.4800 of 2007

Dated this the 13th day of August 2007

O R D E R

Application for anticipatory bail. About an incident which took place at about 10.25 p.m on 13/7/2007 allegations and counter allegations have been raised. It is alleged that a sword stick and cycle chain were used in that incident to cause injuries. A case and counter case have been registered inter alia under Sections 307 and 308 I.P.C. The allegation under Section 307 I.P.C, raised in one case alone, has since been deleted and allegation under Section 308 raised in that case also.

2. The dispute is about the running of an industry. C.I.T.U union and A.I.T.U.C union are at logger heads. A.I.T.U.C union has the blessings of the employer also. The petitioner claims to be an activist of the A.I.T.U.C union and it is alleged that he, along with the employer, had mounted an attack on the victim - a person belonging to the C.I.T.U.

3. The learned counsel for the petitioner submits that the petitioner is absolutely innocent. He originally belonged to

the C.I.T.U union. On account of certain disagreement, he has switched over his loyalties. He is now an activist of A.I.T.U.C union. C.I.T.U union which has the blessings of the political party in power is raising untenable allegations under Section 308 I.P.C against the petitioner with the sole intention of vexing and harassing the petitioner. It is prayed that directions under Section 438 Cr.P.C may be issued in favour of the petitioner.

4. The learned Public Prosecutor opposes the application. The learned Public Prosecutor submits that rivalry between the two unions is causing great law and order problems. The allegations reveal that dangerous weapons were used and a murderous attack was unleashed against the victims. It is too early to take a final and authentic decision on the acceptability of the allegations raised by the rival contestants and the credibility of the data collected. At the moment and with the available inputs, there is no reason whatsoever to invoke the extraordinary equitable discretion under Section 438 Cr.P.C in favour of the petitioner, submits the learned Public Prosecutor.

5. Both case diaries have been placed before me for my perusal. I have gone through the same. Having considered all

the relevant inputs, I am certainly of the opinion that there is merit in the opposition by the learned Public Prosecutor. This, I am satisfied, is not a fit case where the discretion under Section 438 Cr.P.C can or ought to be invoked in favour of the petitioner. It is for the petitioner to appear before the investigating officer or the learned Magistrate having jurisdiction and seek regular bail in the normal and ordinary course.

6. In the result, this petition is dismissed. Needless to say, if the petitioner surrenders before the investigating officer or the learned Magistrate and applies for bail, after giving sufficient prior notice to the Prosecutor in charge of the case, the learned Magistrate must proceed to pass appropriate orders on merits, in accordance with law and expeditiously.

(R.BASANT, JUDGE)

jsr

// True Copy// PA to Judge

R.BASANT, J.

CRL.M.CNo.

ORDER

21ST DAY OF MAY2007